

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* – An issuer requires relief from the credit supporter disclosure requirements in an information circular for a business combination - The credit supporter's sole obligation is to provide cash to support the payment of put rights; the deposit of cash is a condition to closing the transaction in favour of the Filer; the Filer has represented that it will not waive this condition; the cash will be held by an independent escrow agent for payment of the put rights directly to put right holders; the cash will be under the sole control of the escrow agent and not subject to any set-offs, counterclaims, or security held by creditors; the Filer's information circular will disclose the amount of cash to be held by the escrow agent and the process for exercising the put rights.

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations*

January 31, 2014

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Mercator Minerals Ltd.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement that an information circular contain Credit Supporter Disclosure (as defined below) in connection with the credit support being provided by Daselina Investments Ltd. (Daselina) for securities to be distributed

under a proposed business combination between the Filer and Intergeo MMC Ltd (Intergeo) (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba and Nova Scotia; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in NI 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation existing under the *Business Corporations Act* (British Columbia) (the BC Act) and the head office of the Filer is located at 1050 – 625 Howe Street, Vancouver, British Columbia, V6C 2T6;
2. the Filer is a producing copper-molybdenum mining company, with a property that has been in operation for more than 45 years; the principal metal produced by the Filer is copper, with revenues being derived from the production of copper, molybdenum and silver in concentrates and cathode copper;
3. the Filer's common shares are listed on the Toronto Stock Exchange (TSX) under the symbol "ML";
4. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia and is not in default of securities legislation in any jurisdiction;
5. the Filer is proposing a business combination with Intergeo to be consummated through a plan of arrangement under the BC Act (the Transaction) pursuant to an arrangement agreement between the Filer and Intergeo dated December 12, 2013 (the Arrangement Agreement); the Transaction was announced on December 12, 2013;
6. to the best knowledge of the Filer, upon due inquiries:

- (a) Intergeo is a company existing under the laws of the British Virgin Islands and the head office of Intergeo is located in the British Virgin Islands;
 - (b) Intergeo is a copper focused mineral resource company currently developing, exploring and acquiring base metal properties in Russia;
 - (c) Intergeo has two shareholders, of which Daselina owns approximately 99.02% of Intergeo;
 - (d) Daselina is a company existing under the laws of the British Virgin Islands with the head office located in the British Virgin Islands;
 - (e) Daselina does not produce International Financial Reporting Standards or Canadian/US GAAP compliant audited annual or interim financial statements and does not prepare annual or interim management's discussion and analysis (MD&A); and
 - (f) none of the securities of either Intergeo or Daselina have been distributed to the public;
7. in connection with the Transaction, the Filer will prepare, file on the System for Electronic Document Analysis and Retrieval (SEDAR), and mail to shareholders of the Filer, a management information circular (the Mercator Circular); the Mercator Circular will provide shareholders of the Filer with notice of a special meeting that will be called and held to consider the approval of the Transaction and will describe, among other things, the terms of the Transaction and the securities to be issued in connection with the Transaction, including the Put Rights (as defined below);
 8. item 14.2 of Form 51-102F5 requires that, in respect of restructuring transactions under which securities are to be changed, exchanged, issued or distributed, management information circulars must include disclosure for, among others, each entity that would result from the restructuring transaction, if the securityholders of the company in respect of which the management information circular has been prepared will have an interest in that entity after the restructuring transaction has been completed; the disclosure in this circumstance must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that the applicable entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the restructuring transaction, for a distribution of securities in the jurisdiction;
 9. immediately prior to sending and filing the Mercator Circular, the Resulting Issuer will be eligible only to use a long form prospectus prepared in accordance with Form 41-101F1, *Information Required in a Prospectus* (Form 41-101F1);
 10. pursuant to Item 33.1 of Form 41-101F1, where a credit supporter has provided alternative credit support (as defined in NI 51-102) for all or substantially all of the payments to be made under the securities being distributed in connection with a prospectus, the prospectus is required to include certain disclosures about the credit supporter, including financial

statements and management's discussion and analysis, as if the credit supporter were the issuer of the securities and such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning the securities to be distributed (the Credit Supporter Disclosure);

11. on completion of the Transaction, among other things: (i) existing shareholders of the Filer will own approximately 15% of the outstanding common shares of the combined company (the Resulting Issuer) and will receive one transferable put right (Put Right) for each common share of the Filer held; (ii) one Put Right will be issued in respect of each restricted share unit or deferred share unit of the Filer which will vest on closing of the Transaction; (iii) Daselina will own approximately 85% of the outstanding common shares of the Resulting Issuer; and (iv) the common shares of the Resulting Issuer will be consolidated on a 1 for 50 basis;
12. each Put Right will entitle, but will not require, the holder to sell one common share of the Resulting Issuer to the Resulting Issuer at a price of \$5.00 (based on a pre-consolidation price of \$0.10 per share) (the Put Right Price); each Put Right will be exercisable by its holder during the period commencing 18 months from the closing date of the Transaction and ending 30 months from such closing date (the Exercise Window);
13. the Filer anticipates the share capital of the Resulting Issuer on closing of the Transaction will be comprised of approximately 41,821,500 common shares and 6,348,452 Put Rights, of which approximately 35,286,230 common shares will be held by Daselina and 6,348,452 common shares and 6,348,452 Put Rights will be held by current securityholders of the Filer;
14. as a condition to the obligation of the Filer to complete the Transaction (the Support Condition), Daselina is required to deposit cash in the amount of approximately Cdn\$31,744,404 (the Daselina Support) with Computershare Trust Company of Canada or its affiliate (the Put Right Trustee) as trustee of the Put Rights and escrow agent under a Put Rights indenture (the Put Rights Indenture) to be entered into among the Filer, Daselina and the Put Right Trustee;
15. the Filer will not complete the Transaction unless the Support Condition is satisfied;
16. upon its provision of the Daselina Support, Daselina will be a "credit supporter" (as defined in NI 51-102) and the Resulting Issuer will be a "credit support issuer" (as defined in NI 51-102);
17. the purpose of the Daselina Support is to fully support the Resulting Issuer's obligation (the Supported Obligation) to pay the aggregate exercise price upon the exercise of all of the Put Rights issued on the closing of the Transaction (the Supported Put Rights); the amount of the Daselina Support is equal to the amount that will be required to be paid to the holders if they exercise all of the Supported Put Rights;

18. subsequent to the closing of the Transaction, approximately 531,345 additional Put Rights may be issued upon the exercise of each warrant or option of the Resulting Issuer outstanding on closing of the Transaction (the Additional Put Rights), all of whose exercise prices are significantly higher than the Put Right Price; the holders of the Mercator options and warrants are at arm's length to Intergeo and Daselina;
19. the Daselina Support will not be available to support the Resulting Issuer's obligation to pay the Put Right Price of any exercised Additional Put Rights; Daselina will have no obligation to provide any additional funds that may be required to purchase shares pursuant to the exercise of Additional Put Rights (or otherwise);
20. the Arrangement Agreement sets out certain provisions to be included in the Put Rights Indenture, including that the Daselina Support will be under the sole dominion and control of the Put Right Trustee, solely available to fund the Put Right Price and not be subject to any set-offs, counterclaims, or security held by any creditors of Daselina, the Resulting Issuer or the Resulting Issuer's subsidiaries;
21. the Put Rights Indenture will provide the following procedures for the exercise of Put Rights and the payment of the exercise price (the Exercise Procedures):
 - (a) in any given month during the Exercise Window, a registered holder of Put Rights may exercise the Put Rights by delivering to the Put Right Trustee a written notice in the form attached to the Put Rights Indenture together with the common shares required to be purchased by the Resulting Issuer;
 - (b) each month, the Put Right Trustee will notify the Resulting Issuer of the aggregate number of Put Rights exercised that month and the aggregate Put Right Price to be paid to the Put Rights holders;
 - (c) following its receipt of the notice from the Put Right Trustee, the Resulting Issuer will deposit with the Put Right Trustee an amount equal to:
 - (i) the amount sufficient to pay the aggregate Put Right Price of the Additional Put Rights exercised in that month; plus
 - (ii) the lesser of: (a) the aggregate Put Right Price of the Supported Put Rights exercised in that month; and (b) the amount of the "Available Cash" (as defined in the Put Rights Indenture) in respect of such month (less the amount referred to in clause (i) above);
 - (d) the Put Right Trustee will be obligated to drawdown from the Daselina Support and deliver directly to the exercising holders the amount required to pay the aggregate Put Right Price of the Supported Put Rights exercised in such month less the amount, if any, deposited by the Resulting Issuer in accordance with paragraph (c)(ii) above; and

(e) all exercised Put Rights will be cancelled;

22. the Put Rights Indenture will provide that:

- (a) for so long as any Supported Put Rights remain outstanding, the Put Rights Trustee will be required to hold the Daselina Support in trust for the holders of the Supported Put Rights;
- (b) Put Rights that have not been exercised prior to the expiry of the Exercise Window will expire; and
- (c) the unused portion of the Daselina Support, if any, will be delivered to Daselina only after all of the Supported Put Rights have been cancelled or expired;

23. the Put Rights Indenture will be filed on SEDAR under the Resulting Issuer's profile;

24. the Mercator Circular will be prepared in accordance with NI 51-102, except for the Credit Supporter Disclosure; and

25. the Mercator Circular will include, among other things:

- (a) details of the Daselina Support, including the estimated amount of cash to be held by the Put Right Trustee;
- (b) a description of the Exercise Procedures;
- (c) disclosure that the number of Supported Put Rights will be equal to the number of common shares of the Resulting Issuer held by existing shareholders of the Filer (which have not dissented) upon completion of the Transaction;
- (d) prominent risk disclosure that the number of common shares of the Resulting Issuer in the public float will be reduced and could be eliminated through the exercise of Put Rights, that the Resulting Issuer could, as a result, cease to meet the minimum continuing listing requirements of the TSX and that its common shares could be delisted from the TSX; and
- (e) prominent risk disclosure that, if the intrinsic value of the Resulting Issuer's common shares is below the Put Right Price, the trading price of the Resulting Issuer's common shares may be supported by the Put Right Price such that the common shares may trade at prices that exceed their intrinsic value while the Put Rights are outstanding.

Decision

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission